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ASSISTANT SUPERVISOR

Mr Pablo AMOR
Director
European Research Council
Executive Agency
COV2 24/130
1049 Brussels

Brussels, 28 February 2013
GB/XK/mk/ D(2013)0389 C 2012-0997

Dear Mr AMOR,

We have analysed the documents you have provided to the EDPS concerning the notification for prior-checking under Article 27 of Regulation 45/2001 ("the Regulation") on the processing of personal data in the context of the selection and recruitment of Seconded National Experts ("SNEs"), trainees and interim agents the European Research Council Executive Agency ("ERCEA") in light of the EDPS Guidelines on staff recruitment ("the EDPS Guidelines"). The EDPS notes that **ERCEA** prepared a thorough and comprehensive notification accompanied by the relevant documents, such as internal rules, privacy statements, contracts with interim agencies and SLAs with the Commission.

The EDPS points out that the analysis and principles laid down in the EDPS Joint Opinion on "*Staff recruitment procedures by 12 agencies*"¹ ("the EDPS Joint Opinion") are applicable in the present case of **ERCEA**.

On this basis, the EDPS in this letter will only identify and examine **ERCEA's** practices which do not seem to be in conformity with the principles of the Regulation and the EDPS Guidelines, providing **ERCEA** with relevant recommendations.

1) Data retention

ERCEA indicated in the privacy statement related to the selection and secondment of SNEs that their personal files are "retained for eight years after the extinction of all rights of the person concerned and of any dependants, and for at least 120 years after the date of birth of the applicant". Following our question for justification, ERCEA mentioned that the agency follows the Common Retention List (CRL) adopted by the Commission. It also pointed out that they are aware of the workshop organised by the EDPS on 4 December 2012 with representatives of HR and Document management officers as well as DPOs from the three main institutions, ECB and the executive agencies regarding the retention periods of different documents in the personal file.

¹ It was issued on 22 June 2011 (case 2010-0752)

Furthermore, ERCEA expressed the willingness to modify the retention period of personal files as soon as an agreement is reached between the EDPS and the Commission.

As the EDPS highlighted in previous cases and in its Guidelines, the retention period of 120 years of the data in the personal file is excessive and disproportionate to the purpose for which the data are collected, namely recruitment and hence staff member's rights under Staff Regulations. The EDPS reiterates his position that data of successful candidates, such as SNEs, should be kept in the personal file for a retention period of ten years as of the termination of employment or as of the last pension payment. Such period is considered to be reasonable in light of Article 4(1)(e) of the Regulation.

As soon as a final common position is agreed with the Commission, the EDPS will inform ERCEA accordingly in order to modify the retention period of personal files.

2) Right of access

As to the right of access of the data subjects to their personal data, the EDPS recommends that ERCEA adds in all privacy statements related to the SNEs, trainees and interim agents, that data subjects may be given access to their evaluation results, if they request so, regarding all stages of the selection procedure (i.e pre-selection, interview and written tests), unless the exception of Article 20(1)(c) of the Regulation in line with Article 6 of the Annex III to the Staff Regulations are applied. This exception may imply that access should be granted neither to the comparative data concerning other applicants (comparative results), nor to the individual opinions of the members of the Selection Committee if such access would undermine the rights of other applicants or the freedom of members of the Selection Committee. Nevertheless, data subjects should be provided with aggregated results.

Please inform the EDPS of the implementation of his second recommendation, within a period of 3 months after receipt of this letter.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc : Ms Nadine KOLLOCZEK, Data Protection Officer
Ms Carina LENARDUZZI, Head of Human Resources and Infrastructure